

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
Richmond Division**

WILLIAM HENRY WYATT, JR.,

Petitioner,

v.

Civil Action No. **3:08CV442**

DARNLEY R. HODGE, SR.,

Respondent.


MEMORANDUM OPINION

Petitioner, a Virginia prisoner proceeding *pro se*, filed this petition for writ of habeas corpus. On September 5, 2008, Respondent filed a motion to dismiss Petitioner's claims without prejudice, arguing that Petitioner had failed to exhaust his state remedies. On December 1, 2008, Petitioner filed a motion to dismiss his habeas petition.

Because Respondent has filed an answer, Rule 41(a)(2) of the Federal Rules of Civil Procedure applies. Generally, a petitioner's motion for dismissal without prejudice should not be denied absent substantial prejudice to the respondent. *See Andes v. Versant Corp.*, 788 F.2d 1033, 1036 (4th Cir. 1986). Respondent cannot be prejudiced because he has also moved for dismissal without prejudice for lack of exhaustion of state remedies. Petitioner's motion to dismiss his habeas petition (Docket No. 13) will therefore be GRANTED. The action will be DISMISSED WITHOUT PREJUDICE. Respondent's motion to dismiss (Docket No. 8) and Petitioner's motion to amend (Docket No. 7) will be DENIED AS MOOT.

An appropriate Order shall issue.

Date: 12/30/08
Richmond, Virginia

/s/ 
M. Hannah Lauck
United States Magistrate Judge